

Appl. No. : 09/631,576
Filed : August 4, 2000

REMARKS

Claims 40, and 51-81 are presented for further examination. Of these, Claims 55, 56 and 63 have been amended to correct minor informalities. The changes made to the Claims by the current amendment, including deletions and additions, are shown herein with the ~~deletions~~ designated with a strikethrough and the additions underlined. No new matter has been added herewith.

Claim Objections

Claims 55, 56, and 63 were amended to correct informalities as follows: Claim 55 was amended to place the word “rigid” in front of “element”, Claim 56 was amended to add “polyphenylsulfone (PPSU) as one of the high modulus materials, and Claim 63 was amended to substitute “psi/inch” for “psi”.

Rejection under 35 U.S.C. §102(b)

The Examiner rejected Claims 40, 51-53, 56, 67-69, 74, and 79-81 as anticipated by Benjamin (FR 2,728,459).

To be anticipatory under 35 U.S.C. § 102, a reference must teach each and every element of the claimed invention. *See Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379 (Fed. Cir. 1986). “Invalidity for anticipation requires that all of the elements and limitations of the claim are found within a single prior art reference. ...There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention.” *See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565 (Fed. Cir. 1991).

Independent Claims 40 and 79 teach an eyelet on the optic and a cleat on the haptic.

The Examiner argues that Benjamin et al. teaches in Figures 7-11 “cleats” (bridges 31) and “eyelets” (peripheral holding devices 53 having a median slit 38). Applicant respectfully disagrees with the Examiner’s interpretation of the terms “eyelet” and “cleat”.

Upon a review of the Examiner’s comments, Applicant suggests that the definition of an eyelet when consulting three well-accepted dictionaries is: “a small hole or perforation...” (see appendix A). The Examiner states that Benjamin et al. teaches an eyelet on the optic. However, the Examiner then states that the eyelet is shown as reference Nos. 53 and 38 in Figures 9 and 10. Upon a review of the Figures, it is clear that the peripheral holding devices 53 and the notch 38 of Benjamin et al. are in no way “eyelets”. A variety of accepted definitions for the term “eyelet”

Appl. No. : 09/631,576
Filed : August 4, 2000

is provided in appendix A. In each case the definition is some variation on “a small hole”. It is clear that a small hole has a perimeter which completely encloses the hole. Benjamin et al. provides a slot or notch which is made up of two peripheral holding devices 53 and a notch 38 therebetween and has a clear break in the perimeter. The slot of Benjamin does not produce a hole because it is not enclosed within a perimeter. Thus, Benjamin et al. does not teach an “eyelet” in the accepted definition of the term because a slot is not an eyelet.

Further, Benjamin et al. does not teach a “cleat” in the accepted definition of the term. The definition of a cleat is also provided in appendix A from a number of dictionaries. As can be clearly seen from these definitions, the cleat is described as a “projecting piece of metal having projecting arms or ends on which a rope can be wound or secured” or “a wedge-shaped piece fastened to or projecting from something and serving as a support or check” or a “wooden or metal fitting usually with two projecting horns around which a rope may be made fast”.

The Examiner points in Benjamin et al. to the bridge 31 as a cleat. However, the bridge 31 is simply a spoke attaching the inner ring of the haptic to the outer ring. It is not a projecting piece “on which a rope can be wound or secured”. By comparison to the definitions in appendix A, it is clear that the “spoke” 31 is in no way a cleat because it is not projecting from the haptic, in fact both ends are secured to each ring, and one could not wind a rope around such a fitting.

Thus, Applicant submits that neither of the substituents referenced in Benjamin et al. (the bridge 31 or the holding device 53) can be interpreted as claimed herein to be an eyelet or a cleat as commonly defined (see appendix A). The law is clear with respect to the interpretation of a word. As evidenced by *In re Morris et al.* “the claims are given the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art (see below).”

In re Morris et al., * F.3d *, 43 U.S.P.Q.2d 1753 (Fed. Cir. 1997). “Integral” is broad, = “fixedly attached.” Markman does not require having same construction for PTO as for courts. Broad during prosecution, narrow during enforcement. In re Donaldson = narrow only for § 112, ¶ 6. “[T]he PTO applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art...”).

The components in Benjamin et al. which the Examiner identifies as “eyelets” and “cleats” cannot be so interpreted as the “broadest reasonable meaning of the words in their ordinary usage”. Thus, Benjamin et al. does not anticipate the invention because it does not

Appl. No. : 09/631,576
Filed : August 4, 2000

provide eyelets or cleats and Applicant respectfully requests withdrawal of the rejection under 35 U.S.C. §102(b).

Rejection under 35 U.S.C. §§102(b) and 103(a)

The Examiner rejected Claims 77 and 78 as anticipated by or, in the alternative, obvious over Benjamin (FR 2,728,459).

The law is clear that three basic criteria must be met to establish a *prima facie* case of obviousness: (MPEP ¶2143):

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references, when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure (*In re Vaack*, 947 F.2d 488, 20 USPQ2d 1440 (Fed. Cir. 1991)).

Amended Claims 77 and 78 are specific about the attachment of the cleats to the optic, stating that: "said cleats on the optic extend generally in the direction of the plane of the optic, wherein the plane of the optic is generally perpendicular to the optical axis."

With reference to the anticipation rejection, the Examiner believes that the embodiment of Benjamin et al. shown in Figures 12-15 teaches cleat-like projections (47) in the form of mushrooms (projection 45/stem 46 on Figure 15) on the optic and a cleat assembly (44 + projection 45 + stem 46). The element numbered 44 is the element on which the cleat 45/46 rests). However, neither the cleat-like projections nor the cleat assembly of Benjamin as shown in Figures 12-15 extends "generally in the direction of the plane of the haptic, wherein the plane of the haptic is generally perpendicular to the optical axis when the optic is attached to the haptic." This is because in both cases, the projection 45 clearly projects outwardly from the plane of the optic at a 90° angle even when attached to the external area on which the cleat rests 44. Thus, Benjamin et al. does not anticipate the claims because it does not teach each and every element of the invention.

With reference to the obviousness rejection, the Examiner believes it would have been obvious to extend the cleat generally in the plane of the optic because Applicant has not disclosed that extending the cleat generally in the plane of the optic provides an advantage, is

Appl. No. : 09/631,576
Filed : August 4, 2000

used for a particular purpose, or solves a stated problem. However, it would not have been obvious for the following reasons:

Benjamin et al. does not teach all of the claimed elements. Benjamin et al. does not teach that the cleat projects in the plane of the optic. Claims 77 and 78 of the presently claimed invention call for the cleat itself to project in the plane of the optic. In Benjamin et al. the element on which the cleat (47) rests (44), which is part of the cleat assembly, may project in the plane of the lens, but the cleat itself (47) of Benjamin, et al. clearly does not project in the plane of the lens. Thus, Benjamin does not teach all of the claim elements because it does not teach that the cleat projects in the plane of the lens.

There is no motivation for one of skill in the art to extend the cleat generally in the plane of the optic. Applicant submits that there would have been no motivation to extend the cleat of Benjamin et al. in the plane of the optic because there is no teaching or suggestion that the way the cleat is fashioned in Benjamin et al. needs improvement. In fact, should the mushroom shaped projection (45 and 46) be extended, it would no longer attach to the keyhole opening 24 on the haptic and the optic would become disengaged from the haptic within the eye.

The Examiner suggests that Applicant should identify specific advantages to the use of the cleats and eyelets as claimed in Claims 77 and 78. For example, there are clear advantages which make the cleat and eyelet as claimed and positioned herein to be particularly useful. For example, the cleats and eyelet as claimed herein allow for hooking the optic onto the haptic after it has been inserted into the eye without causing trauma to the eye. The “hooking” movement can be performed in the anterior or posterior chamber of the eye easily by the skilled professional with very little possibility of damage and with comparable ease as compared to the attachment of Benjamin et al. (see the Specification paragraphs 40 and 42) and requires no force to do. In contrast, the attachment of Benjamin et al. requires that the optic be “pushed down” onto the haptic in order to get the mushroom-shaped piece into the keyhole opening. This type of movement requires the surgeon to use force within the eye, something which would be unacceptable to the surgeon. This is a much more difficult process and would not be likely to be performed within the confines of the anterior or posterior chamber of the eye without at least some damage to the eye.

Further, the presently claimed invention allows for ease of attachment because once the first side of the optic has been attached to the haptic by hooking, there is good visibility to see the

Appl. No. : 09/631,576
Filed : August 4, 2000

other side and to hook it (see paragraph 40). In contrast, the attachment of Benjamin et al. does not allow for good visibility after the first side of the optic is attached.

Conclusion

In view of the remarks herein, it is believed that the claims are allowable. However, should the Examiner have any further questions, please contact the undersigned at the telephone number appearing below.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

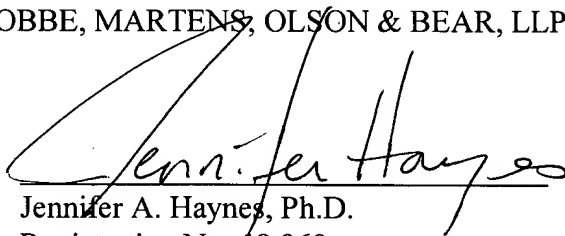
Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated:

Jan. 18, 2005

By:



Jennifer A. Haynes, Ph.D.
Registration No. 48,868
Agent of Record
Customer No. 20,995
(415) 954-4114

W:\DOCS\UAH\UAH-8018.DOC
102004



APPENDIX A

Definition of eyelet in its "ordinary meaning".

1. eyelet
 - a. A small hole or perforation, usually rimmed with metal, cord, fabric, or leather, used for fastening with a cord or hook.
 - b. A metal ring designed to reinforce such a hole; a grommet.
2. A small hole edged with embroidered stitches as part of a design.
3. A peephole.
4. A small eye.

The American Heritage® Dictionary of the English Language, Fourth Edition

Copyright © 2000 by Houghton Mifflin Company.

Published by Houghton Mifflin Company. All rights reserved.

eyelet

\Eye"let\", n. [F. [oe]illet, dim. of [oe]il eye, fr. L. oculus. See Eye, and cf. Oillet.] 1. A small hole or perforation to receive a cord or fastener, as in garments, sails, etc.

2. A metal ring or grommet, or short metallic tube, the ends of which can be bent outward and over to fasten it in place; -- used to line an eyelet hole.

Eyelet hole, a hole made for an eyelet.

Source: *Webster's Revised Unabridged Dictionary*, © 1996, 1998 MICRA, Inc.

eyelet

n 1: a small hole (usually round and finished around the edges) in cloth or leather for the passage of a cord 2: fastener consisting of a metal ring for lining a small hole to permit the attachment of cords or lines [syn: cringle, loop, grommet, grummet]

Source: *WordNet* ® 2.0, © 2003 Princeton University

Definition of cleat in its "ordinary meaning".

1. A strip of wood or iron used to strengthen or support the surface to which it is attached.
2. A projecting piece of metal or hard rubber attached to the underside of a shoe to provide traction.
3. **cleats** A pair of shoes with such projections on the soles.
4. A piece of metal or wood having projecting arms or ends on which a rope can be wound or secured.
5. A wedge-shaped piece of material, such as wood, that is fastened onto something, such as a spar, to act as a support or prevent slippage.
6. A spurlike device used in gripping a tree or pole in climbing.

The American Heritage® Dictionary of the English Language, Fourth Edition
 Copyright © 2000 by Houghton Mifflin Company.
 Published by Houghton Mifflin Company. All rights reserved.

1. [n] a strip of wood or metal used to strengthen the surface to which it is attached
2. [n] a fastener (usually with two projecting horns) around which a rope can be secured
3. [n] a metal or leather projection (as from the sole of a shoe); prevents slipping
4. [v] secure on a cleat; "cleat a line"
5. [v] provide with cleats, as of running shoes

WordNet Dictionary

Main Entry: **¹cleat** ➤

Pronunciation: 'kleɪt

Function: *noun*

Etymology: Middle English *clēte* wedge, from (assumed) Old English *clEat*; akin to Middle High German *klOz* lump -- more at CLOUT

1 a : a wedge-shaped piece fastened to or projecting from something and serving as a support or check **b** : a wooden or metal fitting usually with two projecting horns around which a rope may be made fast

2 a : a strip fastened across something to give strength or hold in position **b (1)** : a projecting piece (as on the bottom of a shoe) that furnishes a grip **(2) plural** : shoes equipped with cleats

Merriam-Webster Online dictionary